

**United States Department of Labor
Employees' Compensation Appeals Board**

R.O., Appellant

and

**DEPARTMENT OF THE ARMY, MILITARY
TRAFFIC MANAGEMENT COMPANY
OAKLAND ARMY BASE, Oakland, CA,
Employer**

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**Docket No. 20-1165
Issued: April 2, 2021**

Appearances:

*Barbara Osborne, for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On May 18, 2020 appellant, through her representative, filed a timely appeal from a May 7, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

The issue is whether OWCP properly suspended appellant's compensation benefits, effective May 7, 2020, for failure to complete a Form EN1032 as requested.

FACTUAL HISTORY

On May 8, 1985 appellant, then a 61-year-old lead accounting technician, filed an occupational disease claim (Form CA-2) alleging stress causally related to factors of her federal employment. She noted that she first became aware of her condition and its relationship to her federal employment on March 1, 1984. OWCP accepted the claim for atypical anxiety disorder. Appellant received wage-loss compensation on the periodic rolls as of June 16, 2002.

As a matter of course, OWCP periodically requested that appellant submit financial disclosure statements (Form CA-1032) which solicited information about her employment, volunteer work, dependent(s) status, receipt of other federal benefits and/or payments, and third-party settlements.

OWCP received a letter dated June 25, 2019 from appellant's representative wherein she related that she was appellant's daughter and that appellant was now living with her in Foster City, California. She enclosed a limited durable power of attorney and an advanced healthcare directive appointing her as appellant's agent.

On September 9, 2019 OWCP forwarded a Form CA-1032 to appellant and notified her that she was required to fully answer all questions on the enclosed Form CA-1032 and return it within 30 days, or her benefits would be suspended. It mailed the notice to appellant's last known address in Foster City, California. No response was received.

By letter dated February 20, 2020, OWCP notified appellant that it had not received the completed Form CA-1032 and that she had 15 additional days to submit the completed form. Appellant did not respond within the allotted time.

By decision dated May 7, 2020, OWCP suspended appellant's compensation benefits, effective May 7, 2020, for failing to complete the Form CA-1032 as requested. It advised that, if appellant were to complete and return the form, her compensation benefits would be restored retroactively to the date they were suspended.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the May 7, 2020 decision, OWCP received additional evidence. Appellant also submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

LEGAL PRECEDENT

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.⁴

Under section 10.528 of OWCP's implementing regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.⁵ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension, if the employee remains entitled to compensation.⁶

ANALYSIS

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective May 7, 2020, for failure to complete the Form CA-1032 as requested.

On September 9, 2019 OWCP provided appellant with a Form CA-1032 and advised her that, if she did not complete and return it within 30 days, her benefits would be suspended. On February 20, 2020 appellant was allotted an additional 15 days to comply. The record reflects that OWCP's letter was properly sent to appellant's last known address of record and there is no indication that it was returned as undeliverable.⁷ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address of record is presumed to be received by the addressee.⁸

Appellant was receiving wage-loss compensation and she was therefore required to complete a Form CA-1032. The record indicates that appellant failed to timely submit the Form CA-1032 within 30 days of OWCP's request, and also failed to file the form within the additional 15 days allowed by OWCP. Thus, the Board finds that OWCP properly suspended appellant's compensation benefits, effective May 7, 2020, pursuant to 20 C.F.R. § 10.528.

⁴ 5 U.S.C. § 8106(b).

⁵ 20 C.F.R. § 10.528. *See R.S.*, Docket No. 20-0580 (issued September 14, 2020); *see also H.B.*, Docket No. 19-0405 (issued June 26, 2019); *M.S.*, Docket No. 18-1107 (issued December 28, 2018); *C.C.*, Docket No. 17-0043 (issued June 15, 2018); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

⁶ *Id.* at § 10.525.

⁷ *See H.B.*, *supra* note 5; *J.J.*, Docket No. 13-1067 (issued September 20, 2013); *Kenneth E. Harris*, 54 ECAB 502, 505 (2003).

⁸ *Id.*

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective May 7, 2020, for failure to complete a Form CA-1032 as requested.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2020 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board